

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 3:97-CR-31
(BAILEY)

GREGORY K. CLINTON,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION
THAT MOTION FOR RETURN OF PROPERTY BE DENIED AND
ORDER VACATING ORDER SETTING EVIDENTIARY HEARING
AND DENYING MOTION TO SUBPOENA WITNESSES

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on June 26, 2008 [Doc. 148]. In that filing, the magistrate judge recommended that this Court deny the motion for return of property because it has no jurisdiction over this motion.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten (10) days of filing of this same, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). No objections to the R & R have been filed. Accordingly, this Court will review the report and recommendation for clear error.

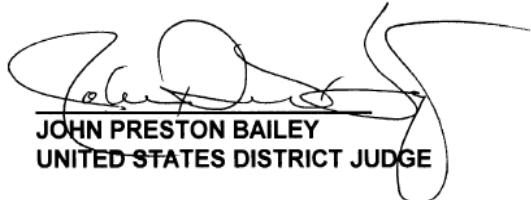
Accordingly, upon careful review of the report and recommendation [Doc. 148], it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation [Doc. 148]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, this Court hereby **ORDERS** as follows:

1. The Motion for the Return of Property [Doc. 126] is **DENIED** because this Court has no jurisdiction of this motion;
2. The Motion to Subpoena Witnesses [Doc. 145] is **DENIED as moot**; and,
3. The Order Setting the Evidentiary Hearing [Doc. 141] is **VACATED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: December 19, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE